

## Internal Revenue Service

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Date:

August 21, 2009

### LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Date 1 =

Company Official =

Dear :

This letter responds to a letter dated April 9, 2009, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time for Parent and Sub 4 to file an election (the "Election") to restore value under § 1.382-8(h) with respect to an ownership change that occurred on Date 1. Additional information was received in letters dated July 9, 2009 and August 3, 2009. The material information is summarized below.

Parent is the common parent of an affiliated group of corporations (the "Parent Group") that join in the filing of a consolidated federal income tax return, using the accrual method and a calendar year. Immediately before the Acquisition, described below, Sub 1 was the common parent of an affiliated group of corporations (the "Sub 1 Group") that joined in the filing of a consolidated federal income tax return. Sub 2 was a wholly owned subsidiary of Sub 1. Sub 3, Sub 4, Sub 5, and Sub 6 (collectively, the "Electing Subsidiaries") were wholly owned subsidiaries of Sub 2.

On Date 1, Parent acquired Sub 1 (the "Acquisition"). As a result of the Acquisition, Sub 1 (along with the Sub 1 Group) underwent an ownership change within the meaning of § 382(g) and § 1.1502-92.

Section 382(a) provides that the amount of the taxable income of any new loss corporation for any post-change year that may be offset by pre-change losses shall not exceed the § 382 limitation for such year. Under § 382(b)(1), the § 382 limitation is determined by multiplying the value of the old loss corporation by the applicable long-term tax-exempt rate.

For federal income tax purposes, the former members of the Sub 1 Group that became members of the Parent Group as a result of the Acquisition composed a loss subgroup within the meaning of § 1.1502-91(d). The losses of such entities are generally subject to a single § 382 limitation based on the value of the parent of the loss subgroup, in this case Sub 1, immediately before the ownership change.

In the case of a controlled group of corporations that do not file a consolidated federal income tax return, § 1.382-8 provides special rules designed to prevent "double counting" by controlled group members. Section 1.382-8(c)(1) requires that the value of the stock of each component member of the controlled group be reduced by the value

of the stock owned by that component member in any other component member. Component members of a controlled group can elect under § 1.382-8(c)(2) to restore some or all of the value to another component member. The election to restore value is made by following the procedures set forth in § 1.382-8(h).

In computing the § 382 limitation for federal income tax purposes, the value of Sub 1 was not required to be reduced by the value of the stock of the Electing Subsidiaries under § 1.382-8(c) because Sub 1 and the Electing Subsidiaries were members of the same consolidated group. However, the members of the Sub 1 Group are subject to state corporate income tax as separate entities in jurisdictions that utilize § 382. For purposes of state corporate income tax in those jurisdictions, a reduction of Sub 1's value was therefore required under § 1.382-8(c) for its ownership interests in Electing Subsidiaries.

The Election was required to be filed with Parent's federal income tax return for its taxable year that included Date 1. For various reasons, however, Parent failed to make the Election in a timely manner.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by regulations (i.e., § 1.382-8(h)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows that it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the government.

Information, affidavits, and representations submitted by Parent and Company Official explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Parent to file the Election.

The above extension of time is conditioned on the Parent Group's tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayer's tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the federal income tax returns involved. Further, no opinion is expressed as to the federal income tax effect, if any, if it is determined that the taxpayer's tax liability is lower. Section 301.9100-3(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, we express no opinion with respect to whether an ownership change occurred, the amount of value, if any, that may be restored, or as to values or amounts of any consolidated net operating losses.

In addition, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayer. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter is directed only to the taxpayer or taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Parent's authorized representative.

Sincerely,

Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: